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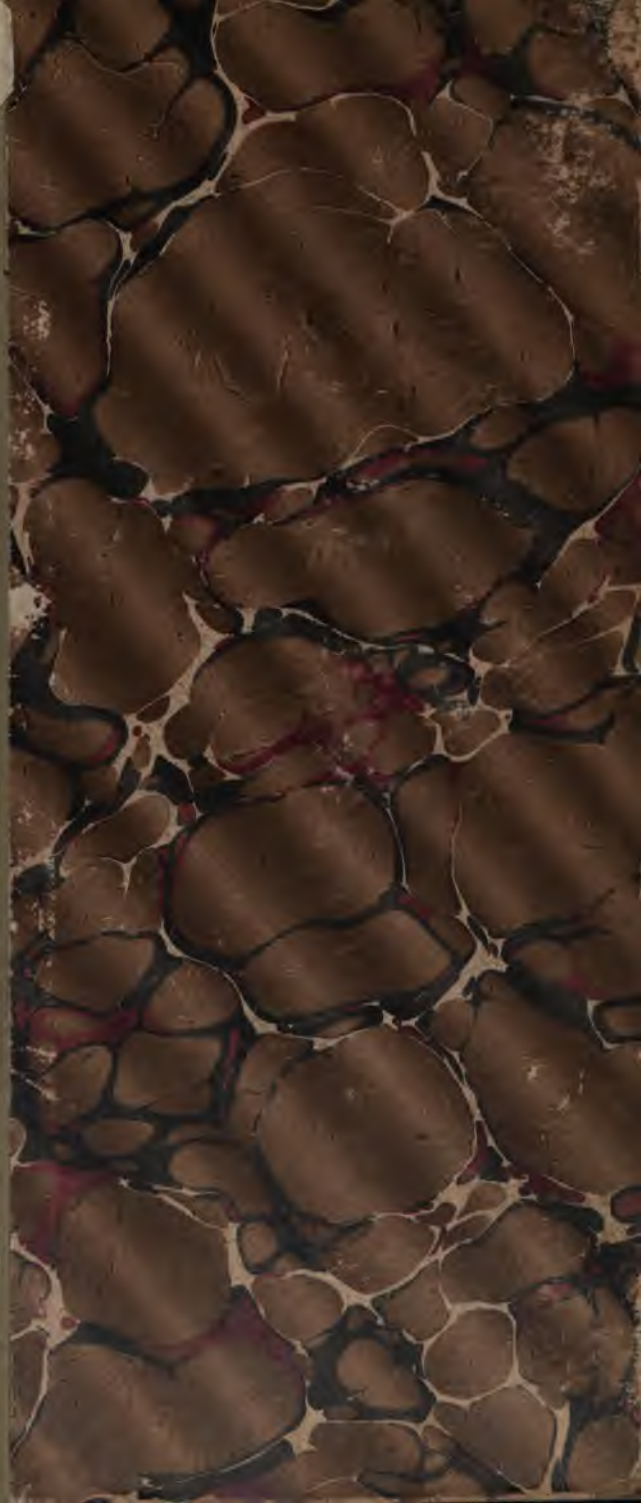
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THE

BOUNDARY QUESTION

REVISED;

AND

DR. FRANKLIN'S RED LINE

SHOWN TO BE

THE RIGHT ONE.

BY A BRITISH SUBJECT.

Thomas C. Grafton, Esq

"I mean these remarks for the people of America. I may be told it is too late. If so, I shall reply, that it is never too late to tell the truth to a reasonable audience; and I hope the result in this case will bear out that opinion."—*Burke's Parliamentary Speeches.*

NEW-YORK:

PRINTED AT THE ALBION OFFICE,

No. 3 Barclay-Street.

1843.

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INTRODUCTION.

The Boundary question had become matter of history. Diplomacy had done its work, in arguing and explaining it. The treaty of 1842 compromised what the treaties of 1783, 1794, 1815, and the award of the King of the Netherlands in 1831, had left unsettled. But scarcely had the two contracting nations ratified the final deed when the voice of discontent was raised, and doubts as to the construction of some portions, and dissatisfaction at the tenor of others, were heard in both hemispheres. Thus another important document attests, the almost unavoidable imperfections of those very acts, which require the clearest exercise of human wisdom.

The particular branch of the treaty of Washington, to which the following pages have reference, is the North-Eastern Boundary between the United States and the British North American possessions.

Almost every one has heard of the discovery of certain maps relating to that subject, only made known to the public since the ratification of the treaty by the President and Senate of the United States, and the Queen of Great Britain. The existence of these maps has been so made known by the publication in the *Globe* newspaper, at Washington, in December, 1842, of the speeches of Mr. Rives, chairman of the Committee of Foreign Affairs, on the 17th of August preceding, and of other senators; during the debate on the question of the ratification of the treaty.

The map of chief interest is one discovered, by Mr. Jared Sparks, in the archives of the *Bureau des Affaires Etrangères* in Paris, in the year 1841; and by him transmitted to Mr. Webster, Secretary of State at Washington, previous to the negotiation held there with Lord Ashburton, in the early part of 1842.

The following extract from Mr. Sparks' communication to Mr. Webster explains the transaction:—

"While pursuing my researches among the voluminous papers relating to the American Revolution in the *Archives des Affaires Etrangères* in Paris, I found in one of the bound volumes an original letter from Dr. Franklin to Count de Vergennes, of which the following is an exact transcript:—

"Passy, December 6, 1783.

"SIR: I have the honor of returning herewith the map your Excellency sent me yesterday. I have marked with a strong red line, according to your desire, the limits of the United States, as settled in the preliminaries between the British and American plenipotentiaries.

"With great respect, I am, &c.,

"B. FRANKLIN."

"This letter was written six days after the preliminaries were signed; and if we could procure the identical map mentioned by Franklin, it would seem to afford conclusive evidence as to the meaning affixed by the commissioners to the language of the treaty on the subject of the boundaries. You may well suppose that I lost no time in making inquiry for the map, not doubting that it would confirm all my previous opinions respecting the validity of our claim.

In the geographical department of the Archives are sixty thousand maps and charts; but so well arranged with catalogues and indexes, that any one of them may be easily found. After a little research in the American division, with the aid of the keeper, I came upon a map of North America, by D'Anville, dated 1748, in size about eighteen inches square, on which was drawn a *strong red line* throughout the entire boundary of the United States, answering precisely to Franklin's description. The line is bold and distinct in every part, made with red ink, and apparently drawn with a hair-pencil, or a pen with a blunt point. There is no other coloring on any part of the map.

"Imagine my surprise on discovering that this line runs wholly south of the St. John, and between the head waters of that river and those of the Penobscot and Kennebec. In short, it is exactly the line now contended for by Great Britain, except that it concedes more than is claimed. The north line, after departing from the source of the St. Croix, instead of proceeding to Mars Hill, stops far short of that point, and turns off to the west, so as to leave on the British side all the streams which flow into the St. John, between the source of the St. Croix and Mars Hill. It is evident that the line, from the St. Croix to the Canadian highland, is intended to exclude *all the waters* running into the St. John.

"There is no positive proof that this map is actually the one marked by Franklin; yet, upon any other supposition, it would be difficult to explain the circumstances of its agreeing so perfectly with his description, and of its being preserved in the place where it would naturally be deposited by Count de Vergennes. I also found another map in the Archives, on which the same boundary was traced in a dotted red line with a pen, apparently colored from the other.

"I enclose herewith a map of Maine, on which I have drawn a strong black line, corresponding with the red one above mentioned."

When Mr. Rives brought forward, during the debate on the treaty, this communication of Mr. Sparks, Mr. Benton informed the Senate that he could produce a map of higher validity than the one alluded to. He accordingly repaired to the library of Congress, and soon returned with a map, of which an account is given in the following extract from the published speech of Mr. Rives:—

"A map has been vauntingly paraded here, from Mr. Jefferson's collection, in the zeal of opposition, (without taking time to see what it was), to confront and invalidate the map found by Mr. Sparks in the Foreign Office at Paris; but the moment it is examined, it is found to sustain, by the most precise and remarkable correspondence in every feature, the map communicated by Mr. Sparks. The Senator who produced it could see nothing but the microscopic 'dotted line running on in a north-easterly direction; but the moment other eyes were applied to it, there was found in bold relief, a strong red line, indicating the limits of the United States, according to the treaty of peace, and coinciding minutely and exactly with the boundary traced on the map of Mr. Sparks. That this red line, and not the hardly visible dotted line, was intended to represent the limits of the United States according to the treaty of peace, is conclusively shown by the circumstance that the red line is drawn on the map all around the exterior boundary of the United States, through the middle of the northern Lakes, thence through the Long Lake, and the Rainy Lake to the Lake of the Woods; and from the western extremity of the Lake of the Woods to the river Mississippi; and along that river to the point where and boundary of the United States, according to the treaty of peace, leaves it, thence, by its easterly course, to the mouth of the St. Mary's, on the Atlantic."

"Here, then," continued Mr. Rives, "is a most remarkable and unforeseen confirmation of the map of Mr. Sparks, and by another map of a most imposing character, and bearing every mark of high authenticity. It was printed and published in Paris, in 1784, (the year after the conclusion of the peace), by Latr , engraver of maps, &c., to the King of France. It is formally entitled on its face, 'A map of the United States of America, according to the Treaty of Peace of 1783.'—('Carte des Etats Unis de l'Am rique, suivant

le Traité de Paix de 1783.') It is dedicated and presented ('*dediée et présentée,*') to his Excellency Benjamin Franklin, Minister Plenipotentiary of the United States of America, near the court of France,' and while Dr. Franklin yet remained in Paris, for he did not return to the United States till the spring of the year 1785. Is there not, then, the most plausible ground to argue that this map, professing to be one constructed 'according to the treaty of peace of 1783,' and being 'dedicated and presented' to Dr. Franklin, the leading negotiator who conducted that treaty, and who yet remained in Paris while the map was published, was made out with his knowledge and by his directions; and that, according as it does identically with the map found by Mr. Sparks in the archives of the Foreign Affairs at Paris, they both partake of the same presumptions in favour of their authenticity."

During this debate in the Senate, Mr. Benton refused altogether to believe in the authenticity of the maps alluded to by Mr. Sparks; but he observed that "if they were really authentic, the concealment of them was a fraud on the British, and that the Senate was insulted by being made a party to the fraud." And further, that "if evidence had been discovered which deprived Maine of the title to one-third of its territory, honor required that it should be made known to the British."

Mr. Woodbury and Mr. Buchanan, in their speeches, seemed to consider the maps discovered by Mr. Sparks as merely showing the old boundaries claimed by France in her colonial disputes with Great Britain. But this opinion is refuted by the fact, that the red line on the map, supposed to have been traced by Franklin, as well as on the one produced by Mr. Benton, goes out to sea beyond the exterior bounds of the American continent, in accordance with the treaty of 1783, which gives twenty leagues out beyond the sea-coast, or the jurisdiction of the United States.

Since the existence of these maps was thus made known to the public, it has been understood that another map, which formerly belonged to Baron Steuben, a Prussian officer in the service of the United States, but which has been for many years in possession of a gentleman of New York, has been transmitted to the State Department in Washington; and that it also shews a line in strict accordance with those before mentioned, and with the British claim.

Later still, a pamphlet has been published in London, by Mr. G. W. Featherstonhaugh, (Feb. 3d, 1843), which contains the following statement:—

"Shortly after the departure of Lord Ashburton (for America), an ancient map, which had apparently been hid away for near sixty years, was discovered in one of the public offices, with a *red line* drawn upon it, exactly conforming to the British claim; and, upon a careful consideration of all the circumstances connected with it, no doubt was entertained that that map was one of the maps used by the negotiators of the treaty of 1783, and that the red line marked upon it, designated the direction of the boundary they had established. But this map was not signed, and could not be authenticated. A map, however, engraved in 1785, only a year, perhaps, after the ratification of the treaty of 1783, by W. Faden, geographer to the king, was taken to the United States by Lord Ashburton. This was evidently copied from an official map, and probably from the one last mentioned. It had the boundary line traced in the copper, and was coloured exactly in the same direction with the red line on the map that could not be authenticated, running from the St. Croix *along the highlands south of the St. John*, and thence to the Lake of the Woods, according to the terms of the treaty."^{*}

* An intelligent gentleman in Boston called the attention of the author to the mention of another map with a *red line*, in connection with the negotiation of 1783, and which he supposed to be identical with the one discovered by Mr. Sparks. In reference to this map, there is in the official correspondence of John Jay, (one of the commissioners with Dr. Franklin, Mr. Adams, and Mr. Laurens, for the United States), an account of a conference between him and Count d'Aranda, the Spanish minister at Paris, in July, 1783, in which it was agreed that the Count should send him a map, with a red line traced on it, in accordance with the boundary proposed by Spain for the western portion of the United States.

"A few days afterwards," writes Mr. Jay, "he sent me the map, with his proposed

We have thus an account of four maps recently discovered, coinciding in the main point of the boundary line intended by the treaty of 1783, and all confirmed, as to the authenticity of that line, by the semi-official map published in London, in 1785, by the Geographer to the King, the correctness of which had never been objected to by the government of the United States at any time after its appearance.

This semi-official map was submitted by Lord Ashburton to Mr. Webster, and by him communicated to the Maine Commissioners, as appears from a passage in their letters to him, dated Washington, June 29th, 1842, in which they say—"the map (Faden's) referred to is a small one, of small pretensions."

The circumstances thus brought to light have led to numerous comments in the newspapers of England, the United States and Canada. It is not the object of this publication to discuss the merits of the new question now at issue. No opinion is offered as to whether the maps alluded to were good evidence in favour of the British claim; or whether the government of the United States was justified in withholding all knowledge of those in their exclusive possession from Lord Ashburton during the negotiations; or whether Mr. Webster was justified in communicating those maps to the Senate and the Maine and Massachusetts Commissioners under a solemn injunction of secrecy, and in arguing against the claim of England, and resisting Lord Ashburton's first proposal for a line of boundary far short of the line he considered England to be justly entitled to, while the department over which Mr. Webster presided possessed evidence in favour of the English claim, which Mr. Rives declared to the Senate he considered "of a most imposing character." The discussion of those questions is left for others. The object of the author in this brief enquiry is to treat the subject as one of history. And he has been led to this publication from the recent promulgation of arguments, which not only impugn the intellect and the information of Benjamin Franklin, but which also imply, in contempt of all former reasoning on the part of Great Britain and in despite of the several maps before alluded to, the belief that the claim of England had no honest or equitable foundation.

The following is one of these articles containing such a line of argument; and it is selected, as coming from a writer of respectability, and who has been already well known for his researches into the boundary question. This article is from the Boston Daily Advertiser, edited by Mr. Nathan Hale, (the brother-in-law of Mr. Everett, United States Minister of London,) and is, it is believed, from his pen.

The article quotes some remarks from the London Times, of February 4th, 1843, on the subject of what Mr. Hale calls "the wonderful discovery of the red line map, as exhibited in Col. Benton's speech and in Mr. Featherstonhaugh's pamphlet," and then continues as follows:

"With the existence of the map above referred to, and of others probably copied from it, we have of course been aware, since the publication by Mr. Benton of his speech in the Washington Globe, and even at an earlier date. We supposed it probable, that some one like Mr. Featherstonhaugh, on the other side of the Atlantic, would be disposed to make such a use of it, as it seems has actually been made, and to represent it as affording some positive and substantial evidence in support of the British claim, which as such, ought

line marked on it in red ink. He ran it from a lake near the confines of Georgia, but east of the Flint River, to the confluence of the Kanawha with the Ohio, thence round the western shores of Lakes Erie and Huron, and thence round Lake Michigan to Lake Superior.—*Lives of John Jay by his Son*. Vol. II., p. 478.

Mr. Jay further states that (Dr. Franklin agreeing with him that this line was preposterous on the part of Spain), he gave the map to Count Vergennes on the 10th of August.

It is almost needless to remark that this could not well be mistaken, by any one giving a thought to the subject, for the map sent by Franklin to Count de Vergennes, on Dec. 6th, after the preliminaries of the treaty were signed, on which were marked the boundaries of the whole of the United States, totally different to those here proposed to the westward, and marking the line to the eastward and southward for twenty leagues out to sea, in accordance with the treaty of 1783; that discovered by Mr. Sparks being exactly so marked.

to have been produced before the negotiation was closed. We have forbore to take any notice of it, until some use of it should be made, because we do not regard it as affording any evidence which ought to have any influence whatever, on the mind of an inquirer possessed of the facts, as they are established by the real and unquestionable evidence in the case.

"It is indeed a matter of surprise, as is most justly remarked by Mr. Sparks, that Dr. Franklin should thus have traced a part of the boundary line of the United States, as defined by the treaty which he had recently signed. It is singular that he should have executed this apparently simple and easy task so carelessly as to have made such a blunder, as it unquestionably is, in making a part of the boundary then deemed unimportant, but since magnified in importance by accidental circumstances. It will be remembered, that the extent of the boundary traced on the French map by Dr. Franklin, by the "strong red line," could not have been less in extent than five or six thousand miles, while the portion of it which we assume to be erroneous was less than a hundred and fifty, in a part of it which may well have escaped the attention of any one not specially charged with the duty of understanding it. That Dr. Franklin did either not understand the line that had been agreed upon, or that he, together with the other negotiators, made a most egregious error in the language of the treaty in which they undertook to describe it, is most apparent, to any one who will compare the two. As exhibiting such a blunder on the part of Dr. Franklin, this map is a remarkable and curious document; but as affording any evidence of the meaning of the treaty, or of the actual intentions of the negotiators, we do not regard it as deserving of the slightest weight.

"Those boundaries were discussed, agreed on, and defined, in the treaty, in conformity with the previously existing disposition of the several tracts of country, as described in charters, proclamations, commissions of Governors, and acts of Parliaments; and whatever may have been the impression of Dr. Franklin in regard to the boundary, when viewed on the map, his understanding of the stipulations of the treaty undoubtedly was that it accorded with the previously established boundaries of the several Provinces, as described in the documents whose language is substantially recited in the treaty.

"It would have been an absurdity, therefore, to suppose that the production of this document would have had any influence in the negotiation had it been produced—because in fact it ought not to have any, in any judgment to be formed upon the question on which it is supposed to have a bearing.

"That a charge of fraud and trickery is founded upon the non-production of such a paper as this, to which a fictitious importance has been given by a variety of accidental circumstances, is not surprising, in such a man as Mr. Featherstonhaugh, who, in the execution of an important public commission, has manufactured a line of highlands where none exist. But we do not apprehend, that either the British or American public, will feel that there is any foundation for such a charge, when they discover, on investigation, how insignificant is the argument—to make the most of it—which can be based upon the red line drawn by the pen of Dr. Franklin.

"We shall pursue the subject further hereafter, unless we shall find that it has been taken up by some abler hand."

Now, the author of the following observations believes firmly that the claim of Great Britain to the line of boundary so long contended for was in accordance with the spirit, the letter, and the common sense of the treaty of 1783; and also with "all equity, good conscience and honour;"* and that consequently the red line traced on the map discovered by Mr. Sparks, and confirmed by the several other maps which have simultaneously come to light, is the right one. He, therefore, offers these pages to the public to show what he believes to have been the rightful pretensions of England on the question, and the manner in which the arguments of the American Secretary of State and of the Maine Commissioners, during the negotiation with Lord Ashburton, could have been replied to.

* The words of John Adams' letter to Lieutenant Governor Cushing, of Massachusetts, dated October 25, 1784, in reference to the river meant as the St. Croix, of the treaty of 1783.

Every word of the text of the following observations was written some months before Mr. Sparks' discovery was known to the author, and during the negotiations at Washington, a few notes subsequently added will speak for themselves. The manuscript was never shown to any citizen of the United States until after the confirmation of the treaty by both Governments. For although the writer was convinced of the justice of the British claim, he felt that it would have been useless to discuss the question on mere theoretic grounds of probability, no *evidence* then existing of force sufficient to satisfy the immense majority of the American people that they were mistaken in their unanimous belief in the validity of their own pretensions. Therefore it was, that he was one of those who was most anxious for the compromise of a dispute, which there seemed so little chance of otherwise terminating without a national quarrel and a war.

The author rejoiced in the conclusion of the treaty of Washington. He thought the terms of settlement good, under the circumstances of the case; and he hoped that the boundary was thenceforward forever mere matter of history. The materials of this publication are selected from a great mass of notes on the subject, accumulated during three years tolerably constant attention to it. They would never have been printed but for the revival of the question by the recent discoveries. They are offered to the public not for the provocation of argument, but to show an old truth in somewhat of a new aspect, and by a series of easy probabilities, leading to the conviction that Franklin's red line *was* the right one. They do not pretend to embrace the many incidental questions which have risen from the main ones. But it is believed that they will be found to condense and simplify the principal arguments; and reference will be frequently made to other sources, for the information of those who might like to consult them.

The object of all such enquiries as this should be the elucidation of truth. Such object is alone worthy of two such nations as the United States and the United Kingdom. For more than a quarter of a century they have both been occupied in a laborious attempt to discover the real meaning of the most important document they ever jointly executed—the treaty which established the independence of the one country, and was meant to secure the peace of both. If, in such an enquiry, truth should be paramount to all other considerations, candour is the best, if not the only means by which it could be reached. Let argument or evidence tell as it may, it can be in the long run but for the common benefit; and it is in the hope that some effect on the future may be produced by the following pages, which cannot now disturb the past, that the author has resolved on making them public.

The manuscript of these observations has been communicated to several American gentlemen who have taken part largely in the discussion of the question. Every one of those who have perused them has given the author credit for sincerity in his treatment of the subject. He hopes that his printed pages will be met in the same spirit; and that they will, at any rate, give no offence to those whom they may fail to convince.

Boston, March, 1843.

OBSERVATIONS ON THE QUESTION OF THE BOUNDARY LINE BETWEEN THE UNITED STATES, NEW BRUNSWICK AND CANADA.

From a minute examination into the merits of the Boundary question, I am convinced that it admits of two diametrically opposite opinions, on conscientious grounds. Reason and illustration have been brought to bear on either side with a bewildering plausibility. But I hold that no power of sophistry could so far pervert a series of positive truths, as to throw them into a chaos of doubt in the minds of candid and disinterested enquirers, if there was not an inherent obscurity in the questions at issue. This goes far to absolve the persons who have been officially concerned in this matter for the last quarter of a century, from much of the odium which deservedly attaches to quibbling statesmen or pettifogging negotiators.

A question like this should be examined broadly, and fairly discussed. It is too important to admit of any narrow issue. The boundary between two nations does not come within the limits of retail dealing. Yet many of the publications to which this question has given rise, abound in all the littleness of special pleading. This has necessarily involved many of the points in contradictions and inconsistency. Few writers on either side have admitted the reasonings of their opponents; and some, on both sides, have in fact more than once felt themselves forced to prove too much. The Americans have all laboured to establish that the north eastern boundary line of the United States, as fixed by the treaty of 1783, is identical with that which was traced by the Royal Proclamation of 1763, and confirmed by the Quebec Act in 1774, establishing the boundaries between the then British provinces and Nova Scotia; and that the line they now insist on is identical with it.

British writers have differed among each other on this point; some endeavouring to show that the line of the Proclamation of 1763 is not only different from that of the treaty of 1783, but that the line now claimed by the United States is different from both of them. Others pretend that the line of 1763, and that of 1783, are exactly the same, and that the line now claimed by England is identical with it.

Various contradictions have arisen from such conflicting opinions; but they do not affect the truths of the question.

I consider it necessary, in attempting to argue the various points of the treaty of 1783, to place one's self as much as possible in the position of the framers of that treaty, reasoning as they may be supposed to have reasoned, on such documents as were known to them, and with such views as to the physical features of the country as they must be believed to have entertained. Later researches and after discoveries ought not, I think, to affect the main question, viz: What were the intentions of the framers of the treaty? (a) And data which were unknown to them, though they may corroborate, ought not to be suffered to shake our convictions, reasonably formed, as to what the framers of the treaty knew, and what they meant to express. (b)

(a) See paragraph 2, p. 14. of the Statement on the part of the United States submitted to the King of the Netherlands, dated Washington, June 1st, 1839. And if higher authority be required, the following extract from Vattel can furnish it:—"Since the sole object of a lawful interpretation of a deed ought to be the discovery of the thoughts of the authors of that deed, whenever we meet with any obscurity in it, we are to consider what probably were the ideas of those who drew up the deed, and to interpret it accordingly."

(b) To prove the great difficulty of understanding the intentions of the framers of treaties, from the dry wording of the treaties themselves, we have only to refer to the difference now existing between the governments of the United States and Great Britain, as to Art. VIII of the Treaty of Washington, executed a few months back—(9th August, 1842.) Arguments are put forth by the President, to prove that England abandoned her views of the right of visitation, because no mention is made of it in the above named article. But when the British negotiators assumed that the intention of England in the treaty of 1783 was to maintain the connection between the two provinces, to secure the whole course of the river St. John in these provinces, &c., they were invariably met by the argument, that we must look to the letter of the treaty, in which those objects have no mention. See statement on the part of the United States, p. xi.

We can only reach their intentions, to a certain extent, by conjecture. But this must not be objected to as a mere flight of fancy. Imagination, founded on probabilities, is reasoning. It is, moreover, reasoning of the highest order. For by its ingenuity, in tracing analogies and penetrating motives, it becomes far superior to that process which is confined to the classification of facts, or the arrangement of things evident, and relative to which there can be no doubt.

I will now briefly state the main points of the controversy :

The Royal Proclamation, before alluded to, was issued on the 7th of October, 1763, the whole of Canada, and all the possessions claimed by France in that portion of North America having been ceded to Great Britain, by the treaty of peace between the two countries of the month of February preceding.

The object of this proclamation was the establishment of the colony, province, or government of Quebec, including the country subsequently called Lower Canada ; and the boundaries of that government were, by said proclamation, fixed as follows :

" Bounded on the Labrador coast by the river St. John ; (c) and from thence by a line drawn from the head of that river, through the Lake St. John to the south end of Lake Nipissing, from whence the said line, crossing the river St. Lawrence and Lake Champlain, in forty-five degrees of north latitude, passes along the highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence, to Cape Rosiers ; and from thence, crossing the mouth of the river St. Lawrence, by the west end of the island of Anticosti, terminates at the aforesaid river St. John."

The boundaries of the province of Quebec were enlarged in another quarter by the Act of Parliament of 14 George III. chap 83, (1774,) commonly called the Quebec Act. But those adjacent to Nova Scotia and Massachusetts, were, by that act, defined in words nearly similar to those used in the proclamation of 1763.

By Article I. of the Treaty of 1783, His Britannic Majesty acknowledged the thirteen United States therein mentioned, to be free, sovereign, and independent States ; and relinquished all claims to the government, propriety, and territorial rights of the same, and every part thereof.

Massachusetts Bay was one of those States. A very important question, therefore, in the true understanding of the Boundary question, is, what were, at the time of the negotiations which ended in the Treaty of 1783, the acknowledged and admitted territorial rights of the province of Massachusetts Bay ?

Article II. of the Treaty of 1783 is as follows :

" And that all disputes which might arise in future on the subject of the boundaries of the United States may be prevented, it is hereby agreed and declared that the following are and shall be their boundaries, viz : from the northwest angle of Nova Scotia, viz : that angle which is formed by a line drawn due north from the source of the St. Croix river, to the highlands ; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwest-most head of Connecticut river ; * * * * *

" East, by a line to be drawn along the middle of the river St. Croix from its mouth in the Bay of Fundy to its source ; and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence : comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean ; except such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

The above extracts from Article II. of the treaty of 1783 contain the germ of the long dispute between England and the United States. No less than

(c) Not the river of the same name which falls into the Bay of Fundy, but a stream which falls into the mouth of the river St. Lawrence.

five points therein mentioned led to directly opposite opinions between the two governments, viz :

- 1st. The North West angle of Nova Scotia.
- 2d. The true source of the St. Croix river.
- 3d. The Highlands.
- 4th. The northwesternmost head of Connecticut river.
- 5th. The distinction between the Atlantic ocean and the Bay of Fundy.

The United States have contended that the N. W. angle of Nova Scotia of the treaty of 1783 is to be found at a spot 145 miles north of the source of the river St. Croix ; that is to the north of the river St. John, which falls into the Bay of Fundy, and of the river Restigouche which falls into the Bay of Chaleurs.

One American writer(d) on the subject, however, contends that the Restigouche ought not to be considered as included among those rivers which empty into the Atlantic ocean, and that consequently the due north line from the source of the St. Croix, should instead of intersecting the Restigouche, stop at a point terminating on the Highlands south of it, and full fifty miles south of the point to which it has been run by the government of the state of Maine.

These opposing opinions would pretty clearly indicate that the North West angle of Nova Scotia was not a positive and well authentic geographical position even after the date of the treaty of 1783. It is admitted on all hands that previous to the date of that document the N. W. angle of Nova Scotia might have been sought for on the banks of the river St. Lawrence, in accordance with the ancient boundaries of the colony of Massachusetts Bay according to its charter dated 1691, and at the source of the river St John according to the propositions made by the Congress of the United States in view to a negotiation for a treaty of peace with Great Britain in 1779.

England has, however, all along maintained that the point designated in the treaty of 1783 as the N. W. angle of Nova Scotia (but which is, correctly speaking, only the N. E. angle of the United States) is to be found where the due north line from the river St. Croix strikes the ridge of Highlands which are to be found upwards of one hundred miles south of those claimed as the true boundary by the United States.

Amidst this diversity of assertion it was all along clear that the main object was to ascertain what was the line of Highlands meant by the framers of the treaty of 1783, and at what particular portion of them a line drawn due north from the river St. Croix would strike.

In order to accomplish this object it was agreed by the treaty of amity, commerce, and navigation of 1794, commonly called Jay's treaty, that commissioners should be appointed by each nation to ascertain what was the river designated in the 10th Article of the treaty of 1783. Five commissioners were accordingly named ; and on their disagreeing an umpire was chosen, who recommended a compromise, and in consequence the most northern source of the river was fixed on as the starting point whence to trace the due north line to the Highlands.

From this most erroneous, though well meant decision, all the subsequent embarrassments arose.

Had the due north line been traced from the westernmost of the Scodiac lakes, in accordance with the original grant of Nova Scotia to Sir Wm. Alexander of 1621, and which had ever been considered and followed as the real title deed for ascertaining the boundaries of the Province, the line must have struck "the Highlands," as no doubt the framers of the treaty of 1783 meant it to do at a point about twenty miles distant, which would have left no room for further contest. But by starting from the northern source of the St. Croix, the line, running considerably to the eastward, passed clear of the Highlands, and only came close to a detached elevation called "Mars Hill," which was but an isolated point geologically connected with the main chain of Highlands, but not forming a visible portion of it.

(d) This writer is Mr. Nathan Hale, quoted in the introductory pages for an opinion respecting the map discovered by Mr. Jared Sparks, and the article in which he thus gives his opinion as to the true situation of the N. W. angle of Nova Scotia is to be found in the American Almanac for 1840.

At this point the British commissioners for running the due north line claimed that it should stop, and that the range of Highlands westward to the head of Connecticut river formed the second boundary line of the treaty.

The American commissioners insisted that no actual ridge of Highlands having been struck by the due north line it should still run on, intersecting the river St. John and never stopping till it reached the highlands beyond the source of the river Restigouche, and close to the river St. Lawrence, as before mentioned.

Finding it impossible to conciliate these two conflicting claimers, the two governments agreed, by the fifth article of the treaty of Ghent, December 24, 1814, to provide for a final adjustment of the boundaries by the nomination of two commissioners to ascertain and determine the disputed points; and that in the event of the commissioners differing a reference to a friendly sovereign was to take place.

The commissioners appointed in conformity with the said article could not agree; and on the 29th of September 1827 the two powers signed a convention making provision for a reference, and the King of the Netherlands was chosen, and he accepted the office of arbiter.

The statements and counter-statements on either side, laid before the royal arbiter, were drawn up with consummate skill and ingenuity. These documents with their appendages and the award of the arbiter, printed but not published, form a folio volume of about 600 pages. The diplomatic correspondence, reports of commissioners, and various detached publications official or professional, pamphlets, articles in reviews and newspapers, would almost form a library. To attempt an abridgment of the whole, preserving any thing like the spirit of the several arguments, would be altogether futile.

The King of the Netherlands delivered his award on the 10th of January 1831, at the Hague in Holland, to Sir Charles Bagot the British ambassador, and Mr. Preble the American minister. The British minister accepted the award. The American minister protested against it (January 12, 1831) on the ground that the arbiter had exceeded his powers in recommending a compromise, his duty being confined to the fact of choosing one or the other of the adverse claims^(c)

Several years passed over in vain attempts at a settlement by negotiation. New commissioners of survey and exploration were appointed; new reports made; new views brought forward; but nothing definitive was done till the appointment of Lord Ashburton by the queen of Great Britain, on a special mission to the United States, to settle this and other points of difference between the countries. His lordship arrived at Washington in April 1842. Four commissioners from the state of Maine and three from Massachusetts repaired to the scene of negotiation on the 11th of June following; and the negotiations almost immediately afterwards begun between Lord Ashburton and Mr. Webster, United States Secretary of State, and through him with the seven commissioners.

In the correspondence which ensued some of the old grounds of argument, in connexion with the treaty of 1783, were entered on; and four particular subjects were discussed at some length, viz:

First, Is the Restigouche an Atlantic river?

Second, What was meant by the American Congress in 1779, when they instructed their commissioners to propose the river St. John, from its source to its mouth, as the eastern boundary between the United States and Nova Scotia?

Third, Were the words "The Sea," as used in the Proclamation of 1763, and the words "The Atlantic Ocean," as used in the second article of the treaty of 1783, identical with each other?

Fourth, Was it intended by the treaty of 1783, that the river St. John should be included, in its entire course, within the British possessions?

The consideration of these four points embraces the entire merits of the

^(c) The author of these observations happening to be at the Hague at that time, and enjoying the confidence of both the British ambassador and the American minister was thus early initiated into the respective merits of the boundary question.

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(d) This writer is Mr. Nathan Hale, quoted in the introductory pages for an opinion respecting the map discovered by Mr. Jared Sparks, and the article in which he thus gives his opinion as to the true situation of the N. W. angle of Nova Scotia is to be found in the American Almanac for 1840.

meant by the treaty of 1783 is nearly identical with that claimed by Great Britain.

That "a New Boundary" was meant by the treaty of 1783, is, I think, clearly demonstrable, for the following reasons:—

1st Because the minister, Mr. Townsend, positively asserted in the debates in the British Parliament, (February 17th, 1783,) that "a new line of boundary was intended by the treaty."

2d. Because the variations in the wording of the treaty of 1783, from the language of the Proclamation of 1763, are obviously designed to show that a new boundary was intended.

3d. Because, had not a new boundary line been intended, the description in the treaty would assuredly have followed, word for word, that of the Proclamation of 1763 and of the commissions to the various Governors of Nova Scotia.

4th. Because the *domestic* line of boundary, so to call it, between the British Provinces designated by the Proclamation of 1763, would have been utterly and manifestly unfit for a boundary line between two independent nations, cutting off the communications between two of the provinces (Quebec and Nova Scotia) which remained faithful to the mother country, and giving territory between those two to a third province, (Massachusetts Bay) which had successfully revolted and shaken off its allegiance.

5th. Because all the negotiations and projects for peace, from 1779 to 1782 (A.) indisputably prove that the Congress of the United States never imagined the possibility of England conceding, as a boundary between her provinces and those which had successfully revolted, the entire line of the Proclamation of 1763: but that, on the contrary, ample documentary evidence notoriously exists, to show that the Congress itself was the proposer of other lines of boundary, and that it never attempted to propose an adherence to the provincial line designated in the Proclamation of 1763, the Quebec act in 1774, and in the commissions to the Governors of Nova Scotia.

6th. That the 11th article of the treaty of 1783, which defines the boundaries, although it contains several geographical errors, is yet most specific in describing the highlands which were to form one portion of the "new boundary," and in laying down what the framers of the treaty meant, as the point which was then to form the northeast angle of the United States, erroneously called in that article, the northwest angle of Nova Scotia; and

7th That the words of that 11th article of the treaty of 1783 can leave little, if any, doubt on the mind of a candid and careful enquirer that the southern ridge of highlands was the line meant as that with which the intersection of the due north line from the source of the St. Croix, was to form the angle from which the boundary was to be traced westward to the head of Connecticut river.

I will now revert to the four branches of the subject particularly discussed in the written communications between Lord Ashburton and the Maine Commissioners, through the medium of Mr. Webster.

With regard to the first of these questions, taken on its own merits, and to refute the opinion of the Commissioners that the Restigouche is an Atlantic river, it may be enough to refer to the article in the American Almanac, for 1840, communicated by Mr. Nathan Hale, and already alluded to.

Secondly, as to the pretension that the United States' Congress, in the instructions to their commissioners, in 1779, to propose the River St. John as the boundary, meant to indicate the river Madawaska, as the northern branch of the St. John, (i.) I must observe that this is not, as it appeared to Lord Ashburton, "a new discovery," of the Maine Commissioners. (k.) The notion was put forward in an article in the North American Review, for April, 1841; but this pretension was originally started at page 28 of the "Definitive Statement" on the part of the United States, laid before the King of the Netherlands.

(A) See the instructions from Congress to the Commissioners, dated 14th August, 1779—*Secret Journals*, vol. 2, p. 225—and 15th June, 1781—*Secret Journals*, vol. 2, p. 445.

(i.) See the letter from the Maine Commissioners to Mr. Webster, June 20, 1842.

(k.) See Lord Ashburton's letter to Mr. Webster, July 11, 1842.

question so long in dispute, viz., What were the intentions of the framers of the treaty of 1783? and I now proceed to notice them *seriatim*.

I pass over the manifest geographical errors in the treaty, particularly in its second article, which defined the boundaries. But I am satisfied that its framers believed (in common with their contemporaries and the generation preceding them) that the country between the river St. Lawrence and the ocean, which they were then about to portion out, was essentially a hilly, or highland, country, and that there was running through it, from the head of Connecticut river, for an extent of 70 or 80 miles up to the 46th degree of north latitude, a line of Highlands, which at that point branched off into two distinct ranges, one running to the northward, parallel to the course of the river St. Lawrence, and the other considerably south of it, running to the N. E., and tending towards the Bay of Chaleurs (f.)

The first of these ranges, taken from the heads of the Connecticut river to its termination near the bay of Chaleurs, may be fairly considered, in general terms, to separate the rivers emptying into the St. Lawrence from those which fall into the sea, including the Ristigouche and all rivers south of it.

The second or southern line of Highlands, from the heads of Connecticut river to the heads of the St. Croix, absolutely separates the rivers flowing into the St. Lawrence from those flowing into the Atlantic ocean, viz., Connecticut river, the Androscoggin, Kennebec, and Penobscot.

The application to any ridge of highlands of the description "dividing, or separating rivers" did not require that such ridge should so divide rivers in every part of its course. It is sufficient if rivers flow from one side of the ridge all through its course, and from both sides of the ridges in parts of its course.

Nor is it necessary that a well understood ridge of Highlands should be a continuous chain of mountains from one end of its course to the other. Occasional breaks in the general line of elevation may, and in fact, do always exist without depriving the line of its character of a Highland Ridge.

Both the ridges of the disputed territory viewed in this aspect, amply bear out the description of "Highlands dividing rivers."

I believe that the first or northern branch of Highlands formed the "Highlands" designated by the Proclamation of 1763; and that the second or southern branch formed the "Highlands" meant by the treaty of 1783 (g.)

I think that the rivers alluded to in the Proclamation of 1763, and in the treaty of 1783, as emptying into the St. Lawrence, were the St. Francis and the Chaudiere: but that the small streams to the northward of the latter were not considered as coming under the denomination of "rivers."

I think the words "the sea" were used in the Proclamation to show that the "Highlands" therein mentioned had reference generally to all the rivers of Nova Scotia and Massachusetts; but that the words "the sea" were not meant to imply that the northern portion of those highlands, that is to say from the 46th degree of latitude upwards, divided from those rivers and their sources; other "rivers" emptying into the St. Lawrence, the small streams in that portion of the line of highlands being too insignificant to be designated as rivers, in the broad geographical sense of the term.

In briefly stating my own opinions, I do not attempt to explain or refute the various contradictions and conflicting opinions of others who have examined the subject, written on it with so much talent, and given evidence of such minute research.

My conviction is that the line designated by the Proclamation of 1763, is nearly identical with that claimed by the United States, and that the line

(f) See Governor Pownall's "Topographical description of the middle British American colonies, published in 1776," in which he expressly specifies two ridges. "All the rivers which have their sources amidst the northern ridge of this great range, fall into Canada or St. Lawrence river, as the St. Francis, Chaudiere, and many others, all which have their sources amidst the southern ridges, fall into the Bay of Fundy, or into the main ocean."

This extract contains absolute evidence as to the two ridges of highlands, and as to the division between the Bay of Fundy and the Atlantic ocean.

(g) To enter fully into the reasoning which has confirmed me in these opinions, would lead me far beyond the limits I have prescribed to myself. It is sufficient to say, that the arguments of American writers as to the first point, and of English writers as to the second, along with my own close examination of the various questions at issue, have led me to these conclusions.

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That "a New BOUNDARY" was meant by the treaty of 1783, is, I think, clearly demonstrable, for the following reasons:—

1st Because the minister, Mr. Townsend, positively asserted in the debates in the British Parliament, (February 17th, 1783,) that "a new line of boundary was intended by the treaty."

2d. Because the variations in the wording of the treaty of 1783, from the language of the Proclamation of 1763, are obviously designed to show that a new boundary was intended.

3d. Because, had not a new boundary line been intended, the description in the treaty would assuredly have followed, word for word, that of the Proclamation of 1763 and of the commissions to the various Governors of Nova Scotia.

4th. Because the *domestic* line of boundary, so to call it, between the British Provinces designated by the Proclamation of 1763, would have been utterly and manifestly unfit for a boundary line between two independent nations, cutting off the communications between two of the provinces (Quebec and Nova Scotia) which remained faithful to the mother country, and giving territory between those two to a third province, (Massachusetts Bay) which had successfully revolted and shaken off its allegiance.

5th. Because all the negotiations and projects for peace, from 1779 to 1782 (*h.*) indisputably prove that the Congress of the United States never imagined the possibility of England conceding, as a boundary between her provinces and those which had successfully revolted, the entire line of the Proclamation of 1763: but that, on the contrary, ample documentary evidence notoriously exists, to show that the Congress itself was the proposer of other lines of boundary, and that it never attempted to propose an adherence to the provincial line designated in the Proclamation of 1763, the Quebec act in 1774, and in the commissions to the Governors of Nova Scotia.

6th. That the 11th article of the treaty of 1783, which defines the boundaries, although it contains several geographical errors, is yet most specific in describing the highlands which were to form one portion of the "new boundary," and in laying down what the framers of the treaty meant, as the point which was then to form the northeast angle of the United States, erroneously called in that article, the northwest angle of Nova Scotia; and

7th. That the words of that 11th article of the treaty of 1783 can leave little, if any, doubt on the mind of a candid and careful enquirer that the southern ridge of highlands was the line meant as that with which the intersection of the due north line from the source of the St. Croix, was to form the angle from which the boundary was to be traced westward to the head of Connecticut river.

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(*h.*) See the instructions from Congress to the Commissioners, dated 14th August, 1779—*Secret Journals*, vol. 2, p. 205—and 15th June, 1781—*Secret Journals*, vol. 2, p. 445.

(*i.*) See the letter from the Maine Commissioners to Mr. Webster, June 29, 1842.

(*k.*) See Lord Ashburton's letter to Mr. Webster, July 11, 1842.

my opinion, fulfilling that object, defeat altogether the claim in favour of the assumed right of Massachusetts Bay, founded on that proclamation.

The first of these documents, the royal commission to Governor Wilmot of Nova Scotia, dated 21st November, 1763, (the proclamation being dated the 7th of the preceding month) specifically states that although the westward boundary of the province is formed "by the St. Croix and a line drawn due north from its source to the southern boundary of the colony of Quebec," yet that the said province of Nova Scotia "doth of right extend as far as the river Pentagoet or Penobscot."

This clearly establishes that whatever might be the pretensions of Massachusetts Bay, they were not confirmed, or even *admitted* by the proclamation of October 1763, or the commission of Montague Wilmot of November 1763, to extend further eastward than the river Penobscot, or further northward than the sources of that river; the crown reserving to itself, while restricting the limits of the province of Nova Scotia, the right of territorial jurisdiction between the St. Croix and the Penobscot, maintaining its right to erect the territory between them into a separate government.⁽ⁿ⁾

The second of the documents so triumphantly brought forward by the United States is the letter from Mr. Jaspar Manduit, agent of Massachusetts Bay, to the Secretary of the province, dated London, 9th June, 1764, eight months subsequent to the date of the proclamation.

It is by that letter incontestibly proved, that even then negotiations were going on between the said agent and the commissioners of the Board of Trade, for the final establishment of the territorial rights of the province of Massachusetts Bay. The province was, even at that date, urging its claims under its disputed charter to the "lands on the river St. Lawrence," as well as the "lands between the Penobscot and St. Croix." It is, therefore, evident that the proclamation of 1763 was issued without any reference whatever to the final boundaries of the province of Massachusetts Bay; that the government of Great Britain only meant by that proclamation as far as it had reference to the tract of country now in question, to establish the southern boundary between the colony of Quebec and Nova Scotia, leaving the pretensions of the province of Massachusetts Bay to the unsettled territory towards the north and east of the Penobscot wholly in obedience, and reserving to the crown the right to erect said territory into a separate province if it thought fit so to do, as was (several years subsequently) strongly recommended and urged by Governor Hutchinson. How the negotiation of Mr. Manduit in 1764 terminated there exists no proof; but it is quite clear that its result did not lead to an acquiescence with his demands.

The Quebec act of 1774, with respect to the portion of boundary now in question, merely repeated the definition of the proclamation of 1763. The principle of right on the part of the crown to the Sagadahock territory, between the St. Croix and the Penobscot, laid down in Wilmot's commission, was never abandoned; and being once laid down it was not considered necessary or fitting to repeat it in the commissions to succeeding governors. The words formerly quoted as inserted in Wilmot's commission were omitted in Governor Parr's commission dated 29th July, 1782, which proves that they were not so omitted by virtue, or in consequence of the treaty of 1783. The territory in question was consequently a disputed matter between the crown and the province of Massachusetts Bay, when the war of the Revolution broke out in 1775. It is unnecessary to say that so it remained during the war.^(o)

(n) It is to be remarked that the MS. letters of Governor Hutchinson of Massachusetts of the years 1770, 1771, 1772 bear out this view in the amplest manner, and strongly recommend that course to the Home Government. These letters, remarkable in more points than one, are preserved among the public records in Boston.

(o) Extracts from an attested copy of a letter from Edmund Burke—then Parliamentary Agent to the State of New York—to the Committee of Correspondence for the General Government of New York, giving a full account of the debates in Parliament on the passage of the Quebec Act, and the discussions on the various amendments.

BEACONFIELD, August 2d, 1774.

"I must observe to you that the proceedings with regard to the town of Boston, and the province of Massachusetts Bay, had from the beginning been defended on their absolute necessity."

origin. Also, that a great object in framing the Proclamation of 1763, and the Treaty of 1783, had been to adopt natural boundaries—rivers and mountains. Therefore, the range of highlands near the St. Lawrence, never having been proposed by Congress, and the St. John river having been rejected by Great Britain, the course of the river St. Croix and the nearest chain of Highlands to it dividing rivers were selected, as preferable to any imaginary line to be traced through the wilderness from the sources of that river to the westward.

Again, it must be borne in mind that at no time between 1697, the date of the treaty of Ryswick and 1783, had England admitted the claims of Massachusetts Bay to the territory eastward of the Kennebec, but had always insisted on the right of the crown to that extent, as a portion of the ancient province of Sagadahock. And this may be a fitting place to advert to the claims put forward by the colony of Massachusetts Bay for the extension of its territorial rights, not only to the eastward but to the north as far as the river St. Lawrence. The charter to the New Plymouth Company was dated 1606. The territorial rights under this charte having been forfeited, the new charter dated 1691 to the province of Massachusetts Bay restored them and extended them to the province of Nova Scotia or Acadia, to the province of Sagadahock, formerly granted by Charles II in 1664 to his brother the duke of York, and to the province of Maine originally granted to Sir Ferdinando Gorges in 1639, and purchased from him by the colony of Massachusetts in 1677. But these being all merely war grants many of them subject to equal pretension of right on the part of France, the claim of Massachusetts to Nova Scotia was nullified by the treaty of Ryswick 1697, by which that province was restored to France, and the grant of the Sagadahock territory was at the same time annulled. But even if it were not so, the charter of 1691 (under which Massachusetts claimed) gave no territorial rights to the colony farther northward than the heads of the river Sagadahock or Kennebec. To understand the arguments which confirm this opinion the various documents just mentioned should be consulted, as well as the opinions of the law officers of the crown on several occasions for above a century back, and of individuals more or less connected with the question.

The principles which actuated the framers of the treaty of 1783, in as far as the North Eastern boundary was concerned, were :

1st. To satisfy the territorial rights of the thirteen United States, the independence of which was about to be acknowledged by Great Britain.

2d. To secure a free and uninterrupted communication between the provinces of Canada and Nova Scotia, which had remained loyal.

3d. To give to each country the free course of the great rivers emptying into the sea in their respective territories, in conformity with the usage of all nations ; as examples of which it may be enough to cite the various negotiations between France and England as to their American possessions, and between France and Spain, and the stipulation of the treaty which fixed on the Pyrenean chain as the boundary between them. (m)

Now, what were the admitted territorial rights of the province of Massachusetts Bay at the time of negotiating the treaty of 1783 ?

The claims of the United States to the boundary specified by the proclamation of 1763 as the identical boundary traced by the treaty of 1783, rests on the assumption that that proclamation and the commissions of the governors of Nova Scotia defined explicitly the north eastern boundaries of Massachusetts Bay, in defining the southern boundary of the province of Quebec and the western boundary of Nova Scotia. And they further maintain that the treaty of 1783 fully confirmed their title to those boundaries.

But there are two documents frequently and triumphantly referred to by the United States and the State of Maine, to aid in proving that the northern range of highlands was that intended by the proclamation of 1763, which while, in

(m) Dans de pareil cas, la règle la plus usitée et la plus convenable, est d'étendre les limites dans l'intérieur des terres, jusqu'à la source des rivières qui se dirigent à la cote, c'est-à-dire ; que chaque nation a de son côté les eaux pendantes, &c.
Memorie of the Marquis de la Galissoniere and M. de Silhouitte (commissioners of the King of France) upon the limits of Acadie, dated 4th October, 1751.

my opinion, fulfilling that object, defeat altogether the claim in favour of the assumed right of Massachusetts Bay, founded on that proclamation.

The first of these documents, the royal commission to Governor Wilmot of Nova Scotia, dated 21st November, 1763, (the proclamation being dated the 7th of the preceding month) specifically states that although the westward boundary of the province is formed "by the St. Croix and a line drawn due north from its source to the southern boundary of the colony of Quebec," yet that the said province of Nova Scotia "doth of right extend as far as the river Pentagoet or Penobscot."

This clearly establishes that whatever might be the pretensions of Massachusetts Bay, they were not confirmed, or even *admitted* by the proclamation of October 1763, or the commission of Montague Wilmot of November 1763, to extend further eastward than the river Penobscot, or further northward than the sources of that river; the crown reserving to itself, while restricting the limits of the province of Nova Scotia, the right of territorial jurisdiction between the St. Croix and the Penobscot, maintaining its right to erect the territory between them into a separate government. (n)

The second of the documents so triumphantly brought forward by the United States is the letter from Mr. Jaspar Manduit, agent of Massachusetts Bay, to the Secretary of the province, dated London, 9th June, 1764, eight months subsequent to the date of the proclamation.

It is by that letter incontestibly proved, that even then negotiations were going on between the said agent and the commissioners of the Board of Trade, for the final establishment of the territorial rights of the province of Massachusetts Bay. The province was, even at that date, urging its claims under its disputed charter to the "lands on the river St. Lawrence," as well as the "lands between the Penobscot and St. Croix." It is, therefore, evident that the proclamation of 1763 was issued without any reference whatever to the final boundaries of the province of Massachusetts Bay; that the government of Great Britain only meant by that proclamation as far as it had reference to the tract of country now in question, to establish the southern boundary between the colony of Quebec and Nova Scotia, leaving the pretensions of the province of Massachusetts Bay to the unsettled territory towards the north and east of the Penobscot wholly in obedience, and reserving to the crown the right to erect said territory into a separate province if it thought fit so to do, as was (several years subsequently) strongly recommended and urged by Governor Hutchinson. How the negotiation of Mr. Manduit in 1764 terminated there exists no proof; but it is quite clear that its result did not lead to an acquiescence with his demands.

The Quebec act of 1774, with respect to the portion of boundary now in question, merely repeated the definition of the proclamation of 1763. The principle of right on the part of the crown to the Sagadahock territory, between the St. Croix and the Penobscot, laid down in Wilmot's commission, was never abandoned; and being once laid down it was not considered necessary or fitting to repeat it in the commissions to succeeding governors. The words formerly quoted as inserted in Wilmot's commission were omitted in Governor Parr's commission dated 29th July, 1782, which proves that they were not so omitted by virtue, or in consequence of the treaty of 1783. The territory in question was consequently a disputed matter between the crown and the province of Massachusetts Bay, when the war of the Revolution broke out in 1775. It is unnecessary to say that so it remained during the war. (o)

(n) It is to be remarked that the MS. letters of Governor Hutchinson of Massachusetts of the years 1770, 1771, 1772 bear out this view in the amplest manner, and strongly recommend that course to the Home Government. These letters, remarkable in more points than one, are preserved among the public records in Boston.

(o) Extracts from an attested copy of a letter from Edmund Burke—then Parliamentary Agent to the State of New York—to the Committee of Correspondence for the General Government of New York, giving a full account of the debates in Parliament on the passage of the Quebec Act, and the discussions on the various amendments.

BRACONFIELD, August 24, 1774.

"I must observe to you that the proceedings with regard to the town of Boston, and the province of Massachusetts Bay, had from the beginning been defended on their absolute necessity."

And when the American Congress thought they could advantageously negotiate for peace, what were their propositions with respect to "the rights of the Massachusetts Bay?" Does not every line of the various instructions to their commissioners, from 1879 to 1782, prove that the rights of the Massachusetts Bay were altogether matter of conjecture and argument? Did they put forward the old claims to "the lands on the St. Lawrence? Did they even ask for the Highlands of the proclamation of 1763 (the Southern boundary of Quebec,) in their entire extent, as a boundary for the State of Massachusetts Bay? No. Their first demand was, as we have seen, for the river St. John, from its source to its mouth, and the Highlands to the northward, close adjoining; and this proposal, notwithstanding the great desire of peace on the part of England, was peremptorily rejected.

The British government, so far from swerving from their original pretensions to the Sagadahock territory, or yielding to the claims of Massachusetts Bay, under their then obsolete charter, all rights under which were really forfeited by the cession of Nova Scotia to France, by the treaty of Ryswick, in 1697, actually claimed (during the negotiations of 1782,) *farther westward*, on the part of England than they had done in 1764; for they claimed first as far westward as the Pisquataqua river, then as far as the Kennebec, refusing all admission of the asserted rights of Massachusetts Bay to any territory east and north of that river. And as late as the 8th of October 1782, seeing the extreme difficulty of coming to an understanding, one of Dr. Franklin's proposals to Mr. Oswald was that "the true line east between the United States and Nova Scotia, should be settled by commissioners after the war;" which proposal was at once rejected, by the British Government, to whom Mr. Oswald had referred it.

It was, then, with these pretensions that England went into the negotiations for peace in 1782; and it was in this admitted uncertainty as to territorial rights, on the part of the United States, that the long-disputed boundaries were, on the one hand, brought down, step by step, from the river St. Lawrence to the Highlands near its banks; then to the river St. John; and finally to the southern range of Highlands; and on the other hand, advanced from the Pisquataqua, to the Kennebec, thence to the Penobscot, and thence to the St. Croix. The treaty of 1783 was, in fact, a treaty of compromise.

not only for the purpose of bringing that refractory town and province into proper order, but for holding an example of terror to the other colonies."

He then states the predominant feeling among men in power, to check the growth of the colonies. He says, "it was not thought wise to make new grants of land, but upon the weightiest considerations, if at all, prerogative was to be strengthened as much as possible."

He continues, "I next inquired upon what principle the Board of Trade would, in the future discussion which must inevitably and speedily arise, determine what belonged to you and what to Canada."

"I was told that the settled uniform doctrine of the Board of Trade was this: that in questions of boundary when the jurisdiction and soil in both the litigating provinces belonged to the Crown, there was no rule but the King's will, and that he might allot as he pleased in both the one and the other. They said also, that under these circumstances even where the King had actually adjudged a territory to one province he might afterwards change the boundary, or if he thought fit erect the parts into separate and new governments at his discretion. They alleged the example of Carolina, first one province then divided into two separate governments, and to which afterwards had a third, that of Georgia, taken from the southern division of it." * *

"Although doubting the soundness of some of these principles, at least, in the extent in which they were laid down, I certainly had no cause to doubt but that the matter would always be determined upon these maxims by the Board of which they were adopted. The more clearly their strict legality was proved, the more uneasy I became of their consequences. By this bill a new province under an old name, was in fact erected—the limits settled by the Proclamation of 1763, were cancelled. On your side a mere constructive boundary was established; and the construction when examined, amounted to nothing more than the King's pleasure."

"I did not press to have the line called the boundary between New York and Canada, because we should again fall into discussion about the bounds of the other colonies. It would be asked why the line along Nova Scotia, New Hampshire, and the northern Massachusetts claim was not called the boundary of the Provinces as well as of New York? It would be said that the act was to settle a constitution for Quebec, and not for adjusting the limits of the colonies; and in the midst of this wrangle the whole object would have infallibly escaped."

This letter has never yet been published, it was communicated to me by a friend, forming a portion of the vast store of materials collected by him from public and private sources, for the completion of a work, the three already published volumes of which have secured to him the foremost place among American historians. This letter, carefully considered, in reference to the claims put forward by American writers, that the Proclamation of 1763, and the Quebec act of 1774, in defining the southern boundaries of Quebec, defined the northern boundary of Massachusetts Bay, seems to me a conclusive refutation of those claims as matter of acknowledged right.

The second principle in framing the treaty of 1793, was to secure the communication between the provinces of Canada and Nova Scotia. Nothing short of the last mentioned lines of boundaries could have thoroughly effected this; and thus it was that England insisted on these lines, and that the American Congress, from whom the various proposals for boundaries emanated, modified their several propositions to meet that object.

They first hoped that the river St. John would satisfy England on that point. Finding their mistake, is it not preposterous to suppose that they would *go back* and propose *for the first time* the Highlands near the St. Lawrence, and the line of provincial boundary as between Quebec and Nova Scotia! Assuredly it is. And there is not an iota of evidence, to establish that such a proposition was *ever* contemplated during the negotiations.

Such a proposition, besides being altogether inadmissible as regards the second principle before mentioned, would have been destructive to the *third*, namely, the securing the free course of the rivers to the respective countries. The St. John was cut across by the north line of the commissions to the governors of Nova Scotia; a matter of small importance, as long as the whole of its course lay within the British Possessions; but a consequence not to be contemplated, when part of those possessions were to be declared independent of Great Britain.

Did England, when she yielded her claims to go westward to the Kennebec or the Penobscot, ever dream of demanding a boundary line running east to west, that would cut either of those rivers across, leaving their upper parts in her territory, and their lower course and mouths in that of the United States? No. True to the principles which have invariably presided over the framing of boundary lines, she accepted "the Highlands" which divided the sources of those rivers from the sources of other rivers; as the American Congress, acting on the same obvious principle, when they found that the St. John could not be obtained as a line, had proposed the said highlands as the natural boundary that would secure all the principles involved.

I may now observe that it was in the first proposition of Congress, namely, for the St. John's river from its source to its mouth, as the north-eastern boundary, that the words, "rivers which fall into the *Atlantic Ocean*," were first brought into use. These words were chosen advisedly and *of necessity*. The words, "which fall into the sea," would have failed to convey a description of the restricted boundary agreed upon; besides which, they had been previously and properly used in the Proclamation of 1763. The object now being to show that a different line of highlands from those of the proclamation was intended, and two lines being recognized at that day, the description of them inserted into the 11th article of the treaty, was at once simple, and, as the framers of the treaty no doubt thought, not to be misunderstood.

To imagine that "the sea," and "the Atlantic Ocean," as applied to the *two distinct ranges of highlands*, were ever considered convertible terms, appears to me beyond belief. Let any candid enquirer look at any map, which may be believed to have lain before the Congress, who proposed the line of highlands now in question. Are not the words "ATLANTIC OCEAN," in connection with the range of highlands from whence the rivers Connecticut, Penobscot and Kennebec flow, so prominent that no one could be well used in describing them clearly; while the same Congress knew full well, that the words, "the sea," formerly used to specify the northern line of highlands, could not, without confounding both ranges, be applied in a description of the southern range, with which they now had to deal.

If a different line of boundary from that of 1763 was not intended in 1793, why alter the words, "the sea," into the words, "the Atlantic Ocean?" Had a larger range of boundary been intended, and had "the Atlantic" borne a more extended sense than "the sea," the propriety of the change would have been admitted at once. But the case was the very reverse; and the manifest object being to give a restricted boundary, and "the Atlantic" being evidently a less extensive term, the change that was made seems so obviously required by the circumstances of the case, that all further argument to prove its propriety and necessity appears to me superfluous. But, for the sake of argument, it may be still asked, why, if no change of boundary was meant, was Mitchell's map, published in 1755, eight years anterior to the proclamation, and of course

not showing the boundary specified in that document, *alone* used by the commissioners who framed the Treaty of 1783, in their official consultations together, as it was proved to be by the testimony of John Adams?

I think abundant reasons have been given to show, that the boundary line of the Proclamation, and of the Quebec Act, could not have been intended by the treaty; but supposing even that the lines were identical, and that the words, "the sea," and "the Atlantic," are synonymous, for what possible object could the latter have been substituted for the former? It cannot be pretended that this occurred accidentally, in a cautiously prepared, well considered, solemnly executed, document. It must have been done by design; and if so, there must have been an object. To prove that the change was designedly made in the treaty, we have only to look to the commissions of the governors of Quebec, subsequent to its date. In all of these the same change of words is made; "the Atlantic Ocean" being substituted for "the sea," in the description of the southern boundary of Quebec, proving, that instead of the highlands which formerly formed the boundary, other highlands—and no one can be mistaken as to *what* other highlands—were substituted. But in the commissions to the various Governors of New Brunswick, after the western portion of Nova Scotia was formed into a separate province under that name, no variation is made from the wording of the previous commissions to the Governors of Nova Scotia; the words being, invariably, "from the St. Croix due north to the *southern boundary of the province of Quebec.*"

If, then, I would ask again, no change was made by the treaty of 1783 from the Proclamation of 1763, why did not the description of the eastern boundary of the United States in the treaty merely mention "a line due north, from the St. Croix to the southern boundary of the province of Quebec?" Because the southern boundary of Quebec was itself changed, from the northern range of highlands to the southern range, and because it became necessary to specially describe that southern range by words that proved the difference between the two.

But it will be observed, that the words of the commissions of the Governors of New Brunswick, after the treaty, remained the same as in those of the previous commissions to the Governors of Nova Scotia, because it was indifferent to *them* where the southern boundary of Quebec lay. To *it* their proper jurisdiction extended, be it where it might. For the Governors of Quebec, however, the change was absolutely essential, because it brought down their jurisdiction from the northern to the southern range of highlands. It was, consequently, necessary to specify, as is clearly done in their commissions subsequent to the treaty, the highlands, which had become the southern boundary of the province.^(p)

The framers of the treaty were, no doubt, satisfied that the range of southern highlands was very clearly described by their being called "highlands separating rivers that empty into the Atlantic ocean," in contradistinction to the other well-known range, previously described as "highlands separating the rivers that empty into the sea." Had the framers of the treaty foreseen any possible plea of ambiguity in the change they made, they would, no doubt, have designated the highlands as "the southern range," or have stated the parallel of latitude in which they had their course. It is to be regretted that they did not so describe them; but they cannot be blamed for the omission of what they must have thought, under all the circumstances of the case, and in perfect understanding with each other, a mere waste of words.

The United States' authorities and the Maine commissioners contend that the northern range of highlands answers the description of the Treaty of 1783, that is to say, that it divides the rivers of the St. Lawrence from the Atlantic rivers. Argued as a question of logic, and admitting the major to include the minor, perhaps that assertion may be true, for the Atlantic ocean is, no doubt, a portion of the sea. But the framers of the treaty were not chopping logic.

[p] Great stress has been laid by American writers on the disputes about jurisdiction existing ever since the date of the treaty of 1783, between the province of Quebec (or Lower Canada) and New Brunswick. These disputes prove nothing but a difference of opinion as to the extent of jurisdiction; and that very difference shows, that the Governors of Lower Canada considered that their rights under the treaty of 1783 extended far to the southward of the southern boundary of Quebec according to the proclamation of 1763.

five points therein mentioned led to directly opposite opinions between the two governments, viz :

1st. The North West angle of Nova Scotia.

2d. The true source of the St. Croix river.

3d. The Highlands.

4th. The northwesternmost head of Connecticut river.

5th. The distinction between the Atlantic ocean and the Bay of Fundy.

The United States have contended that the N. W. angle of Nova Scotia of the treaty of 1783 is to be found at a spot 145 miles nor.h of the source of the river St. Croix ; that is to the north of the river St. John, which falls into the Bay of Fundy, and of the river Restigouche which falls into the Bay of Chaleurs.

One American writer(d) on the subject, however, contends that the Restigouche ought not to be considered as included among those rivers which empty into the Atlantic ocean, and that consequently the due north line from the source of the St. Croix, should instead of intersecting the Restigouche, stop at a point terminating on the Highlands south of it, and full fifty miles south of the point to which it has been run by the government of the state of Maine.

These opposing opinions would pretty clearly indicate that the North West angle of Nova Scotia was not a positive and well authentic geographical position even after the date of the treaty of 1783. It is admitted on all hands that previous to the date of that document the N. W. angle of Nova Scotia might have been sought for on the banks of the river St. Lawrence, in accordance with the ancient boundaries of the colony of Massachusetts Bay according to its charter dated 1691, and at the source of the river St John according to the propositions made by the Congress of the United States in view to a negotiation for a treaty of peace with Great Britain in 1779.

England has, however, all along maintained that the point designated in the treaty of 1783 as the N. W. angle of Nova Scotia (but which is, correctly speaking, only the N. E. angle of the United States) is to be found where the due north line from the river St. Croix strikes the ridge of Highlands which are to be found upwards of one hundred miles south of those claimed as the true boundary by the United States.

Amidst this diversity of assertion it was all along clear that the main object was to ascertain what was the line of Highlands meant by the framers of the treaty of 1783, and at what particular portion of them a line drawn due north from the river St. Croix would strike.

In order to accomplish this object it was agreed by the treaty of amity, commerce, and navigation of 1794, commonly called Jay's treaty, that commissioners should be appointed by each nation to ascertain what was the river designated in the 10th Article of the treaty of 1783. Five commissioners were accordingly named ; and on their disagreeing an umpire was chosen, who recommended a compromise, and in consequence the most northern source of the river was fixed on as the starting point whence to trace the due north line to the Highlands.

From this most erroneous, though well meant decision, all the subsequent embarrassments arose.

Had the due north line been traced from the westernmost of the Scodiac lakes, in accordance with the original grant of Nova Scotia to Sir Wm. Alexander of 1621, and which had ever been considered and followed as the real title deed for ascertaining the boundaries of the Province, the line must have struck "the Highlands," as no doubt the framers of the treaty of 1783 meant it to do at a point about twenty miles distant, which would have left no room for further contest. But by starting from the northern source of the St. Croix, the line, running considerably to the eastward, passed clear of the Highlands, and only came close to a detached elevation called "Mars Hill," which was but an isolated point geologically connected with the main chain of Highlands, but not forming a visible portion of it.

(d) This writer is Mr. Nathan Hale, quoted in the introductory pages for an opinion respecting the map discovered by Mr. Jared Sparks, and the article in which he thus gives his opinion as to the true situation of the N. W. angle of Nova Scotia is to be found in the American Almanac for 1840.

quoted in the American "statement" before alluded to, as having used the expression "rivers which fall into the sea or Atlantic ocean." I will just refer to the American map of the State of Maine by Osgood Carlton, (founded on the first survey of the country subsequent to the treaty of 1783,) which in its title professes to show the course of the rivers flowing into "the Atlantic ocean and the Bay of Fundy." (s)

These individual errors, discrepancies, or admissions, or whatever else they may be called, are most numerous on the part of the agents at both sides of the question, and cannot affect the real principles at stake, which are to be thoroughly understood only by long and minute investigation of the subject.

I will add a word or two with respect to *maps*, as they have been brought into the late discussion. If Faden's map of 1785, which traces the boundary line in accordance with the British claim, was influenced by his appointment to be Geographer to the King, (as insinuated by the Maine Commissioners, (t)) it, at any rate, proves that, even within *two years* after the ratification of the treaty of 1783 England put forth the claim to the disputed territory, which it has been over and over asserted on the part of the United States, she never dreamt of putting forward until during the negotiations for the treaty of Ghent in 1814.

Passing by, however, the numerous maps brought forward in evidence on either side, I must remark that one map has been often alluded to, the production of which would have given me more satisfaction *than all the others put together*. That is Dr. Franklin's *own* map, a section of which, containing the line of boundary marked out with his own hand, was sent by him to Mr. Jefferson, then Secretary of State, with a letter dated Philadelphia, April 8th, 1790. This letter, the last public one which, I believe, he wrote, may be found in the last page, vol. 6th and last, of Duane's edition of Franklin's works, Philadelphia, 1827.

To see this original section of so remarkable a document in this controversy, was one of my chief objects in going to Washington in April, 1840, soon after I began to study this subject. The late Mr. Forsyth, then Secretary of State, assured me that the map was not to be found in the Department. (u) I thought it strange that so important a document should have been lost; but I was shown by Mr. Forsyth and some gentlemen in his office, a large map by Mitchell, which they all believed to be the identical map that was before the Commissioners at Paris or Passy, during the negotiations in 1782 and 1783. On this map a pencil line was traced, through the line of highlands and watercourses, in accordance to what I believed to have been the boundary of the Proclamation of 1763. The next and last time I saw this map, it was in the possession of the Maine Commissioners at Washington, during the negotiations in June, 1842. Judge Preble considered it as of the first importance to the question, and affirmed his belief that it was the identical map mentioned by Dr. Franklin in his letter to Mr. Jefferson, and that the pencil line was *the line* traced by Franklin's own hand, as the boundary of the treaty of 1783.

Now, independent of Mr. Forsyth's statement that Franklin's *section* of map sent to Mr. Jefferson was lost, I must observe that this map in Judge Preble's possession was *an entire* copy of Mitchell's map, the several sections all bearing the same discolouring marks of age, and all pasted on canvass. I would moreover observe, that Dr. Franklin states in one of his letters, (see the appendix to the statement of the American Commissioners submitted to the King of the Netherlands,) "I am perfectly clear in the remembrance that the map we used in tracing the boundary was brought in the treaty by *the Commissioners from England*."

It is therefore clear that the large map lately in Judge Preble's possession

(s) I found this original map in the Massachusetts Land Office, Boston, where it now still is, I have no doubt.

(t) See their letter to Mr. Webster, June 20, 1842.

(u) I have since learned from good authority that it was to be seen there as late as the year 1828. Its disappearance dates from that year, and I may here mention that in the American "statement" so often before referred to, it is stated that "some maps may have escaped notice; but not a single one has been omitted that has come within the knowledge of the American Government," p. 30. And this passage conveys a very strong, though a negative, admission of the obligation under which the Government felt itself, to produce *all maps*, which might be considered as evidence on the question at issue.

question so long in dispute, viz., What were the intentions of the framers of the treaty of 1783? and I now proceed to notice them *seriatim*.

I pass over the manifest geographical errors in the treaty, particularly in its second article, which defined the boundaries. But I am satisfied that its framers believed (in common with their contemporaries and the generation preceding them) that the country between the river St. Lawrence and the ocean, which they were then about to portion out, was essentially a hilly, or highland, country, and that there was running through it, from the head of Connecticut river, for an extent of 70 or 80 miles up to the 46th degree of north latitude, a line of Highlands, which at that point branched off into two distinct ranges, one running to the northward, parallel to the course of the river St. Lawrence, and the other considerably south of it, running to the N. E., and tending towards the Bay of Chaleurs (f.)

The first of these ranges, taken from the heads of the Connecticut river to its termination near the bay of Chaleurs, may be fairly considered, in general terms, to separate the rivers emptying into the St. Lawrence from those which fall into the sea, including the Ristigouche and all rivers south of it.

The second or southern line of Highlands, from the heads of Connecticut river to the heads of the St. Croix, absolutely separates the rivers flowing into the St. Lawrence from those flowing into the Atlantic ocean, viz., Connecticut river, the Androscogging, Kennebec, and Penobscot.

The application to any ridge of highlands of the description "dividing, or separating rivers" did not require that such ridge should so divide rivers in every part of its course. It is sufficient if rivers flow from one side of the ridge all through its course, and from both sides of the ridges in parts of its course.

Nor is it necessary that a well understood ridge of Highlands should be a continuous chain of mountains from one end of its course to the other. Occasional breaks in the general line of elevation may, and in fact, do always exist without depriving the line of its character of a Highland Ridge.

Both the ridges of the disputed territory viewed in this aspect, amply bear out the description of "Highlands dividing rivers."

I believe that the first or northern branch of Highlands formed the "Highlands" designated by the Proclamation of 1763; and that the second or southern branch formed the "Highlands" meant by the treaty of 1783 (g.)

I think that the rivers alluded to in the Proclamation of 1763, and in the treaty of 1783, as emptying into the St. Lawrence, were the St. Francis and the Chaudiere: but that the small streams to the northward of the latter were not considered as coming under the denomination of "rivers."

I think the words "the sea" were used in the Proclamation to show that the "Highlands" therein mentioned had reference generally to all the rivers of Nova Scotia and Massachusetts; but that the words "the sea" were not meant to imply that the northern portion of those highlands, that is to say from the 46th degree of latitude upwards, divided from those rivers and their sources; other "rivers" emptying into the St. Lawrence, the small streams in that portion of the line of highlands being too insignificant to be designated as rivers, in the broad geographical sense of the term.

In briefly stating my own opinions, I do not attempt to explain or refute the various contradictions and conflicting opinions of others who have examined the subject, written on it with so much talent, and given evidence of such minute research.

My conviction is that the line designated by the Proclamation of 1763, is nearly identical with that claimed by the United States, and that the line

(f) See Governor Pownall's "Topographical description of the middle British American colonies, published in 1776," in which he expressly specifies two ridges "All the rivers which have their sources amidst the northern ridge of this great range, fall into Canada or St. Lawrence river, as the St. Francis, Chaudiere, and many others, all which have their sources amidst the southern ridges, fall into the Bay of Fundy, or into the main ocean."

This extract contains absolute evidence as to the two ridges of highlands, and as to the distinction between the Bay of Fundy and the Atlantic ocean.

(g) To enter fully into the reasoning which has confirmed me in these opinions, would lead me far beyond the limits I have prescribed to myself. It is sufficient to say, that the arguments of American writers as to the first point, and of English writers as to the second, along with my own close examination of the various questions at issue, have led me to these conclusions.

private library in the city of Boston, and which is, I think, altogether explanatory of the views of the opposition speakers in the debate alluded to, and strongly confirmatory of the interpretation which I have always given to them.

The title page of this pamphlet, published in London, shows no author's name; but it is signed "Portius," and bears the date on the 40th (which is the last) page, of Feb. 5, 1783. I will give an extract from the portion which relates to the North Eastern Boundary; and I think it furnishes convincing proof not only that the reproaches addressed to the Ministers and the Commissioners of that day, by the press as well as in Parliament, had no reference whatever to the line of boundary at present claimed by the United States; but that the Highlands of the treaty were understood at that period, even by those who disapproved of the treaty, to be the identical ridge claimed as the true line of the treaty, by Great Britain. From the fact that the boundary line is pointed out in this pamphlet, as running "from the head of the river St. Croix, along the ridge of the highlands at the back of Massachusetts Bay, to the source of the Connecticut river," it is not to be believed that those who cavilled at the treaty had any notion that the boundary line crossed the St. John, or extended to the highlands to the north of that river.

It will be also perceived that the most serious reproaches made against Lord Shelburne, having reference to the north east boundary, in this pamphlet, are for having given up to America "the vast tract of country extending from the St. Croix to the Kennebec, and the whole of the countries surrounding Lake George and Lake Champlain." But not a word of allusion is made to the district between the head of the St. Croix and the St. John, or to the large tract north of it, either in the pamphlet or in parliament; and it seems impossible to suppose that to the series of reproaches so minutely specified, would not have been added another for the cession of what is now "the disputed territory," had such a cession been believed to have been included within the boundaries agreed upon, by the commissioners who framed the treaty of 1783.

"However personally and peculiarly unpleasing to your lordship it may be, and however devoid of entertainment it may prove even to the public, yet so fatal are the concessions made by the limits agreed on between us and America, that I owe it to my country and myself, on this most important point, to go into a detail, with geographical precision, and to convince every impartial person, that no possible situation or circumstances could justify a minister in thus abandoning the interests of the empire. Here, at least, I renounce all declamation, and stand on facts. By the line of partition passing up the river St. Croix, *the vast tract of country extending from that river to the Kennebec*, is given up to America. It is true, indeed, that this country was included in the original charter of the province of Massachusetts Bay; but the general court could not grant any part of it without the consent and permission of the crown of England; and no grants were ever attempted beyond the river Penobscot. By the passage of the line FROM THE HEAD OF THE RIVER ST. CROIX, along the ridge of the highlands at the back of Massachusetts Bay to the source of the Connecticut river, and passing thence through the 45th degree of northern latitude into the river St. Lawrence, the whole of the countries surrounding Lake George and Lake Champlain, with both those lakes, and the two forts of Crown Point and Ticonderago, are ceded to America," etcetera — *Letter to the Earl of Shelburne on the Peace, London, 1783, 2d edition, pages 16, 17, 18.*

commissioners who surveyed the Northeast Boundary on behalf of the British government. Admitting the map to have been identified as the one marked by Dr. Franklin, the question would still have been left where it was; for as a well-informed provincial contemporary very forcibly observes—

"It would have shown Dr. Franklin's opinion of the treaty, and nothing else; but the opinion of Dr. Franklin, or of any other individual, however intelligent or well-informed, was by no means conclusive as to the real effect of the words of the treaty. It is quite clear, from the discussions in the British houses of parliament, when the treaty was laid before them, that every body, both ministers and opposition, interpreted *the treaty according to the American claim*; and, from that time down to the year 1800 or later, every English map of any authority or importance, laid down the boundary *precisely as the Americans claimed it*; and if the recorded opinions of statesmen and geographers had been considered conclusive as to the effect of the treaty, it would have been determined in favour of the United States many years ago. But the subject will be elaborately discussed in the house of Commons, when the motion of which Lord Palmerston has given notice, comes before it on the 23d.



origin. Also, that a great object in framing the Proclamation of 1763, and the Treaty of 1783, had been to adopt natural boundaries—rivers and mountains. Therefore, the range of highlands near the St. Lawrence, never having been proposed by Congress, and the St. John river having been rejected by Great Britain, the course of the river St. Croix and the nearest chain of Highlands to it dividing rivers were selected, as preferable to any imaginary line to be traced through the wilderness from the sources of that river to the westward.

Again, it must be borne in mind that at no time between 1697, the date of the treaty of Ryswick and 1783, had England admitted the claims of Massachusetts Bay to the territory eastward of the Kennebec, but had always insisted on the right of the crown to that extent, as a portion of the ancient province of Sagadahock. And this may be a fitting place to advert to the claims put forward by the colony of Massachusetts Bay for the extension of its territorial rights, not only to the eastward but to the north as far as the river St. Lawrence. The charter to the New Plymouth Company was dated 1606. The territorial rights under this chartre having been forfeited, the new charter dated 1691 to the province of Massachusetts Bay restored them and extended them to the province of Nova Scotia or Acadia, to the province of Sagadahock, formerly granted by Charles II in 1664 to his brother the duke of York, and to the province of Maine originally granted to Sir Ferdinando Gorges in 1639, and purchased from him by the colony of Massachusetts in 1677. But these being all merely war grants many of them subject to equal pretension of right on the part of France, the claim of Massachusetts to Nova Scotia was nullified by the treaty of Ryswick 1697, by which that province was restored to France, and the grant of the Sagadahock territory was at the same time annulled. But even if it were not so, the charter of 1691 (under which Massachusetts claimed) gave no territorial rights to the colony farther northward than the heads of the river Sagadahock or Kennebec. To understand the arguments which confirm this opinion the various documents just mentioned should be consulted, as well as the opinions of the law officers of the crown on several occasions for above a century back, and of individuals more or less connected with the question.

The principles which actuated the framers of the treaty of 1783, in as far as the North Eastern boundary was concerned, were :

1st. To satisfy the territorial rights of the thirteen United States, the independence of which was about to be acknowledged by Great Britain.

2d. To secure a free and uninterrupted communication between the provinces of Canada and Nova Scotia, which had remained loyal.

3d. To give to each country the free course of the great rivers emptying into the sea in their respective territories, in conformity with the usage of all nations ; as examples of which it may be enough to cite the various negotiations between France and England as to their American possessions, and between France and Spain, and the stipulation of the treaty which fixed on the Pyrenean chain as the boundary between them.(m)

Now, what were the admitted territorial rights of the province of Massachusetts Bay at the time of negotiating the treaty of 1783 ?

The claims of the United States to the boundary specified by the proclamation of 1763 as the identical boundary traced by the treaty of 1783, rests on the assumption that that proclamation and the commissions of the governors of Nova Scotia defined explicitly the north eastern boundaries of Massachusetts Bay, in defining the southern boundary of the province of Quebec and the western boundary of Nova Scotia. And they further maintain that the treaty of 1783 fully confirmed their title to those boundaries.

But there are two documents frequently and triumphantly referred to by the United States and the State of Maine, to aid in proving that the northern range of highlands was that intended by the proclamation of 1763, which while, in

(m) Dans de pareil cas, la règle la plus usitée et la plus convenable, est d'étendre les limites dans l'intérieur des terres, jusqu'à la source des rivières qui se dirigent à la côte, c'est-à-dire ; que chaque nation a de son côté les eaux pendantes ; &c.
Memorial of the Marquis de la Galissonière and M. de Silboulte (commissioners of the King of France) upon the limits of Acadie, dated 4th October, 1751.

my opinion, fulfilling that object, defeat altogether the claim in favour of the assumed right of Massachusetts Bay, founded on that proclamation.

The first of these documents, the royal commission to Governor Wilmot of Nova Scotia, dated 21st November, 1763, (the proclamation being dated the 7th of the preceding month) specifically states that although the westward boundary of the province is formed "by the St. Croix and a line drawn due north from its source to the southern boundary of the colony of Quebec," yet that the said province of Nova Scotia "deth of right extend as far as the river Pentagoet or Penobscot."

This clearly establishes that wha'ever might be the pretensions of Massachusetts Bay, they were not confirmed, or even *admitted* by the proclamation of October 1763, or the commission of Montague Wilmot of November 1763, to extend further eastward than the river Penobscot, or further northward than the sources of that river; the crown reserving to itself, while restricting the limits of the province of Nova Scotia, the right of territorial jurisdiction between the St. Croix and the Penobscot, maintaining its right to erect the territory between them into a separate government.⁽ⁿ⁾

The second of the documents so triumphantly brought forward by the United States is the letter from Mr. Jaspas Manduit, agent of Massachusetts Bay, to the Secretary of the province, dated London, 9th June, 1764, eight months subsequent to the date of the proclamation.

It is by that letter incontestibly proved, that even then negotiations were going on between the said agent and the commissioners of the Board of Trade, for the final establishment of the territorial rights of the province of Massachusetts Bay. The province was, even at that date, urging its claims under its disputed charter to the "lands on the river St. Lawrence," as well as the "lands between the Penobscot and St. Croix." It is, therefore, evident that the proclamation of 1763 was issued without any reference whatever to the final boundaries of the province of Massachusetts Bay; that the government of Great Britain only meant by that proclamation as far as it had reference to the tract of country now in question, to establish the southern boundary between the colony of Quebec and Nova Scotia, leaving the pretensions of the province of Massachusetts Bay to the unsettled territory towards the north and east of the Penobscot wholly in obedience, and reserving to the crown the right to erect said territory into a separate province if it thought fit so to do, as was (several years subsequently) strongly recommended and urged by Governor Hutchinson. How the negotiation of Mr. Manduit in 1764 terminated there exists no proof; but it is quite clear that its result did not lead to an acquiescence with his demands.

The Quebec act of 1774, with respect to the portion of boundary now in question, merely repeated the definition of the proclamation of 1763. The principle of right on the part of the crown to the Sagadahock territory, between the St. Croix and the Penobscot, laid down in Wilmot's commission, was never abandoned; and being once laid down it was not considered necessary or fitting to repeat it in the commissions to succeeding governors. The words formerly quoted as inserted in Wilmot's commission were omitted in Governor Parr's commission dated 29th July, 1782, which proves that they were not so omitted by virtue, or in consequence of the treaty of 1783. The territory in question was consequently a disputed matter between the crown and the province of Massachusetts Bay, when the war of the Revolution broke out in 1775. It is unnecessary to say that so it remained during the war.^(o)

(n) It is to be remarked that the MS. letters of Governor Hutchinson of Massachusetts of the years 1770, 1771, 1772 bear out this view in the amplest manner, and strongly recommend that course to the Home Government. These letters, remarkable in more points than one, are preserved among the public records in Boston.

(o) Extracts from an attested copy of a letter from Edmund Burke—then Parliamentary Agent to the State of New York—to the Committee of Correspondence for the General Government of New York, giving a full account of the debates in Parliament on the passage of the Quebec Act, and the discussions on the various amendments.

BRACONFIELD, August 24, 1774.

"I must observe to you that the proceedings with regard to the town of Boston, and the province of Massachusetts Bay, had from the beginning been defended on their absolute necessity."

US 1655.45

The boundary question revised

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